

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

Call to Order: By **CHAIRMAN EDITH CLARK**, on February 21, 2003 at 8:22 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Edith Clark, Chairman (R)
Sen. John Cobb, Vice Chairman (R)
Rep. Dick Haines (R)
Rep. Joey Jayne (D)
Sen. Bob Keenan (R)
Sen. Emily Stonington (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robert V. Andersen, OBPP
Pat Gervais, Legislative Branch
Lois Steinbeck, Legislative Branch
Sydney Taber, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: Nursing Home IGT
Prevention and Stability Account
for DPHHS
Reconsideration of Prior Actions

{Tape: 1; Side: A; Approx. Time Counter: 0.3 - 14.5}

Lois Steinbeck, Legislative Fiscal Division (LFD), distributed a spreadsheet without nursing home intergovernmental transfer (IGT) (Exhibit 1) and one with nursing home IGT (Exhibit 2). Starting with Exhibit 1, she said that this is the action taken yesterday. The legislative general fund budget adopted on January 7 is about \$243.3 million; the Executive Budget proposal is \$262.3 million; the Subcommittee rejection of added general fund is a negative \$3.3 million; and the Subcommittee rejection of general fund cuts is \$1.2 million. Before action taken yesterday, they were at \$260 million FY04 and \$268 million FY05, which is \$17 million in FY04 and \$25 million in FY05 over the legislative adopted target. The spreadsheet also shows the Subcommittee initiatives (SI) which have already been adopted. Referring to Exhibit 2, she reviewed the programs that the Subcommittee has decided to fund over the Executive Budget level and the program funding that it has restored. The Subcommittee now needs to come up with \$79 million more in state funding above the legislative target.

Ms. Steinbeck then reviewed the funding initiatives that have been adopted by the Subcommittee, and said that it has identified in its Prevention and Stabilization Account (PSA) an additional \$32.6 million in FY04 and 32.4 million of state funds. If the Subcommittee allocates the \$16 million, it leaves them \$1.7 million below the level the Subcommittee expected. When they take the expanded tobacco control and prevention program into account, there is \$1.7 million left from which they could fund the Domestic Violence Program at \$77,000 a year and Adult Protective Services (APS).

EXHIBIT (jhh39a01)

EXHIBIT (jhh39a02)

{Tape: 1; Side: A; Approx. Time Counter: 14.5 - 20.6}

REP. JAYNE asked if the Subcommittee had taken action on the tobacco bills yesterday, and **Ms. Steinbeck** said that the Subcommittee can not take action on SB 351, which is the \$.41 cigarette tax increase, unless it makes its own bill. The Subcommittee will be discussing alternative uses of I-146 today. The Subcommittee appropriation will be above the Executive Budget due to the proposed SIs: fully funding daycare, which adds \$15 million; funding the MHSP prescription amounts, which adds \$9 million; and funding the expanded tobacco control, which adds \$2.7 million. Other legislative initiatives for the Subcommittee are the rejection of the fee for Child Support Enforcement (CSE Division), the change in Children's Mental Health Services (CMHS), and the TANF tribes.

IGT Transaction Fee Discussion

{Tape: 1; Side: A; Approx. Time Counter: 20.6 - 27.}

Ms. Steinbeck explained that in the 2001 session, \$2 million was taken off the top of the nursing home IGT and was budgeted as state Medicaid matching funds in Mental Health Services (MHS). When counties participated in the IGT, they provided the State \$2 million above the amount required to fully draw down the federal funds. For example, instead of paying a 30 percent match, they paid a 35 percent match and the State kept the extra \$2 million from the counties to offset general funds in Medicaid MHS. Yesterday, the Subcommittee moved the IGT funds budgeted in the Addictive and Mental Disorders Division (AMDD) back to Senior and Long Term Care (SLTC). This move offset \$2 million in general fund in the nursing home budget and the \$2 million general fund was transferred back to AMDD. There is no net change in funding. Should the federal government change the rules on IGTs, this action shifts the risk which providers bear to SLTC.

EXHIBIT (jhh39a03)

{Tape: 1; Side: A; Approx. Time Counter: 27 - 48.2}

Using a hypothetical situation, **Ms. Steinbeck** explained that if there were no transaction fee, the county would pay \$28 to the State and would receive \$100 for a net gain of \$72. With a transaction fee, the county might pay \$30 to the State and receive back \$100, and the State would gain \$2. **Rose Hughes, Montana Healthcare Association (MHA)**, said that if the county pays more for a fee, the amount the county receives actually goes down. **Ms. Steinbeck** said that her understanding was that the net change for the county goes down, but it does not reduce the IGT. **Ms. Hughes** said that all the spreadsheets that are run show that even though the counties put more in, the net that goes back to the nursing home every time they take something out does go down. The transaction fee will impact this; she is not saying a transaction fee is bad, just that it does impact the amount received. **Ms. Steinbeck** concluded that she and Ms. Hughes are saying the much same thing, only differently, the net payment to the nursing homes does go down.

Ms. Steinbeck went over the history of the IGT, and said that in the last biennium, the IGT was a substantial increase for all nursing homes. The legislature included language that it should be a one-time lump sum payment so that it would not be rolled into the base. If the federal rules changed, it would not need to be backfilled with general fund.

{Tape: 1; Side: B; Approx. Time Counter: 0.4 - 11.5}

The Subcommittee further discussed the potential IGT transaction fee proposal using different percentages. **SEN. KEENAN** summarized the IGT process: county nursing homes put in \$2 for the State;

which draws down match to become \$7; the counties keep \$4 of that; the State takes \$3 and puts \$2 of that into Mental Health Services; the remaining \$1 is matched again and becomes \$3; that \$3 goes to the noncounty nursing homes.

There was discussion of whether they should try increasing the amount in the cigarette tax bill or increase the IGT transaction fee percentage and treat everybody the same. **Ms. Steinbeck** stated that the most significant leveraging which occurs with an IGT is with the county nursing homes because nursing home payment rates are proportionately lower than the upper payment limits (UPL), and there are a greater percentage of Medicaid eligible people in nursing homes than occurs in hospitals. **John Chappuis, Deputy Director of the Department of Public Health and Human Services (DPHHS)**, observed that there is a hospital tax which will also impact the UPL. It is not much money, but when they do the calculations that needs to be considered.

There was continued discussion as to whether the cigarette tax or the IGT transaction fee would be the better vehicle to provide funding for DPHHS. **SEN. STONINGTON** offered her thought that the simplest way would be another penny on the cigarette tax and five percent on the IGT transaction fee.

{Tape: 1; Side: B; Approx. Time Counter: 11.5 - 15.5}

Ms. Steinbeck moved on to actions that need reconsideration or funding that needs restoration. She said that they have not taken action on the Domestic Violence Program.

EXHIBIT (jhh39a04)

**EXECUTIVE ACTION ON RECONSIDERATION OF PRIOR ACTIONS AND
RESTORATION OF FUNDING**

{Tape: 1; Side: B; Approx. Time Counter: 15.5 - 16.2}

Motion/Vote: **SEN. STONINGTON** moved **THAT THE DOMESTIC VIOLENCE PROGRAM BE INCLUDED IN PROGRAM FUNDING FROM THE DPHHS PREVENTION AND STABILIZATION ACCOUNT (PSA)**. Motion carried 6-0 on a voice vote. **REP. CLARK** voted **REP. HAINES'** proxy.

{Tape: 1; Side: B; Approx. Time Counter: 16.2 - 18}

Referring to Exhibit 3, **Ms. Steinbeck** said that if they wish to reconsider the nursing home IGT, they will need to restore the general fund in SLTC, and the IGT will be included in SLTC, as well. In Addictive and Mental Disorders Division (AMDD), they need to reduce the general fund and backfill with the new PSA. If this is what they wish to do, then they need to reconsider their action of the previous day.

{Tape: 1; Side: B; Approx. Time Counter: 18 - 18.3}

Motion/Vote: SEN. COBB moved TO RECONSIDER ACTION TAKEN ON NURSING HOME IGT ON FEBRUARY 20. Motion carried 6-0 on a voice vote. REP. CLARK voted REP. HAINES' proxy.

{Tape: 1; Side: B; Approx. Time Counter: 18.3 - 27.3}

Ms. Hughes said that she is trying to understand what the Subcommittee is proposing for the nursing homes and the net effect of their actions. **Ms. Steinbeck** replied that backfilling the rate increase to all nursing homes and taking the IGT from it is a net increase to county nursing homes of only \$400,000. The rate increase that will be backfilled is distributed to all nursing homes. It would still be an increase to the counties beyond the Subcommittee action taken yesterday.

Referring to Exhibit 3, **Ms. Steinbeck** said that she had made an error in the spreadsheet. They would need to put a \$2 million increase each year for SLTC, and a \$2 million reduction each year for general fund in AMDD. There is no net effect to the general fund. There is a \$2 million annual increase to the funds allocated from the PSA. If the Subcommittee also acts on the five percent IGT, it will not be reflected because it is a revenue action not an expenditure action. The general fund rate decrease will be backfilled with nursing home IGT money.

{Tape: 1; Side: B; Approx. Time Counter: 27.3 - 35.2}

Motion: SEN. COBB moved TO ADOPT THE LOWER BLOCK OF THE SPREADSHEET WITH \$2 MILLION GENERAL FUND LEAVING AMDD AND GOING TO SENIOR AND LONG TERM CARE EACH YEAR OF THE BIENNIUM. THIS ACTION SHOULD BE AUGMENTED BY THE GENERAL FUND SWITCH BETWEEN AMDD AND SLTC.

There was an implied withdrawal of the motion.

{Tape: 1; Side: B; Approx. Time Counter: 35.2 - 41}

Responding to general confusion over the errors in the spreadsheet, **Ms. Steinbeck** said that she would go make the appropriate corrections and suggested that **Ms. Gervais** continue with the actions in her programs.

Ms. Gervais said that in action yesterday, they clearly provided \$750,000 from the PSA, but it was unclear whether they intended to decrease funding from the existing SSR for Child Support Enforcement Division (CSED). She asked for clarification of this.

{Tape: 1; Side: B; Approx. Time Counter: 41 - 41.8}

Motion/Vote: SEN. STONINGTON moved THAT IT IS THE SUBCOMMITTEE INTENT THAT THE CSED FEE SSR BE DECREASED BY \$750,000, AND IT IS OFFSET BY FUNDING FROM THE PSA. Motion carried 6-0 on a voice vote. REP. CLARK voted REP. HAINES' proxy.

{Tape: 1; Side: B; Approx. Time Counter: 41.8 - 49.5}

There was discussion on action taken regarding Adult Protective Services (APS) in which they had rejected the general fund reduction and on February 20 had provided funding from the PSA. Ms. Gervais suggested that they may wish to reconsider their action and accept the general fund reduction because yesterday's action provided funding from the PSA.

{Tape: 2; Side: A; Approx. Time Counter: 0.4 - 1.1}

Motion/Vote: SEN. COBB moved TO RECONSIDER ACTION ON THE EXECUTIVE REQUEST TO ACCEPT THE \$50,000 GENERAL FUND REDUCTION IN ADULT PROTECTIVE SERVICES (APS). Motion carried 6-0 on a voice vote. REP. CLARK voted REP. HAINES' proxy.

{Tape: 2; Side: A; Approx. Time Counter: 1.1 - 1.6}

Motion/Vote: SEN. COBB moved TO ACCEPT THE EXECUTIVE REQUEST TO REDUCE THE APS GRANTS BY \$50,000 GENERAL FUND AND TO REPLACE IT WITH FUNDS FROM THE PSA. Motion carried 6-0 on a voice vote. REP. CLARK voted REP. HAINES' proxy.

{Tape: 2; Side: A; Approx. Time Counter: 1.6 - 6.2}

Ms. Gervais said that many of the general fund reductions included matching funds. She asked if it was the Subcommittee's wish to leave the matching funds in place for the items funded from the PSA or would they prefer to adjust the matching funds. If the stabilization account does not come into effect, they would have left excess federal spending authority within the budget. The Subcommittee indicated that if and when the stabilization account funding fails, they would remove the federal spending authority through contingency language.

{Tape: 2; Side: A; Approx. Time Counter: 6.2 - 16.6}

Ms. Steinbeck returned and distributed her new spreadsheet, Exhibit 5, and noticed that there was another error. She asked them to cross out the \$2 million reduction in AMDD for IGT nursing care, and leave the \$2 million increase in PSA. She said that the motion by SEN. COBB had been misstated. It reverses the general fund switch made yesterday; leaves the nursing home IGT in SLTC; reallocates that money between the IGT and rate reduction; and reduces general fund and increases funds from the new PSA in AMDD. The net overall effect of the amendment is to increase funds coming out of the PSA by \$4 million. The net impact to the general fund is zero. The nursing home IGT offsets

a rate decrease, and the Mental Health Program (MHP) is funded \$2 million from the PSA. If the bill that implements the PSA fails, there will be a \$2 million matching funding reduction in Medicaid MHP with the amendment.

EXHIBIT (jhh39a05)

REP. JAYNE asked if there would be reductions to services within either group should this take place, and **Ms. Steinbeck** said that it is a funding switch.

{Tape: 2; Side: A; Approx. Time Counter: 13.3 - 16.4}

Ms. Steinbeck reviewed the items that were dependent on the passage of legislation. **Mr. Chappuis** requested that if the new PSA is not approved, the new IGT money be returned to SLTC and that the original base funding of \$2 million in AMDD be returned to it. **SEN. COBB** said that they are hoping to put as many items in their package as possible so that it will be more difficult to break it apart. He would rather not have contingency language. **CHAIRMAN CLARK** said that there is \$16 million in general fund and suggested that they just tag \$2 million of that for the Mental Health Program.

{Tape: 2; Side: A; Approx. Time Counter: 16.4 - 22.8}

Motion: **SEN. COBB** moved TO ACCEPT THE PROPOSAL OF FEBRUARY 21, 2003 ON EXHIBIT 5 WITHOUT THE \$2 MILLION IGT FOR AMDD.

Discussion:

Bob Andersen, Office of Budget and Program Planning (OBPP), referred to Exhibit 5 and said that his understanding of what was going on was that SLTC should be up \$2 million, but they are up \$4 million. **Ms. Steinbeck** explained that yesterday the Subcommittee had taken \$2 million IGT out of AMDD, which is why they need to scratch the \$2 million in reduction to AMDD. AMDD stays zero and SLTC goes up to \$4 million. **Ms. Steinbeck** continued with her explanation of the actions that had been taken and how they affect the funding. The only funding shifts in the motion are: SLTC receives \$2 million in annual general fund and AMDD loses \$2 million in annual general fund. There were continued explanations of this issue.

There was an implied withdrawal of **SEN. COBB's** motion on this issue.

{Tape: 2; Side: A; Approx. Time Counter: 22.8 - 24.5}

Motion/Vote: **SEN. COBB** moved TO INCREASE GENERAL FUND IN SLTC BY \$2 MILLION EACH YEAR AND DECREASE GENERAL FUND BY \$2 MILLION IN

AMDD EACH YEAR, AND TO REALLOCATE THE IGT IN SLTC TO OFFSET THE RATE REDUCTION ADOPTED BY THE SUBCOMMITTEE YESTERDAY. Motion carried 6-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

{Tape: 2; Side: A; Approx. Time Counter: 24.5 - 27.8}

There was discussion of the IGT transaction fee, which had tentatively been set at one percent.

{Tape: 2; Side: A; Approx. Time Counter: 27.8 - 28}

Motion/Vote: SEN. COBB moved TO ADOPT A FIVE PERCENT TRANSACTION FEE ON ALL IGT. Motion carried 5-1 with REP. JAYNE voting no on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

Discussion of Provider Rate Reductions for Children's Mental Health Services

{Tape: 2; Side: A; Approx. Time Counter: 28 - 39.1}

Jani McCall provided information on the Children's Mental Health Services (CMHS) rate comparison of out-of-home care and stated that providers may go out of business due to the declining rate structure. She reviewed the historical comparison of rates for Therapeutic Foster and Group Homes. Save for the residential treatment centers, the rates have gone down since 1995. She requested that the Subcommittee view this as an exception. She said that if they were to look at rates across the board, this is the only class of providers where there has been a continual decrease in rates from 1995 forward.

EXHIBIT (jhh39a06)

{Tape: 2; Side: A; Approx. Time Counter: 39.1 - 49.5}

Mr. Chappuis said that it was true that rates have gone down since 1995. It will improve if they get the rate decrease back in. The \$850,000 per year has been added back in by Subcommittee action. **Ms. Steinbeck** said that she has been unable to determine what rate assumptions were made in the Medicaid projections. The issue becomes whether they wish to give this provider group a rate increase above the "hold harmless" in the rate reduction.

{Tape: 2; Side: B; Approx. Time Counter: 1.5 - 8.5}

Continuing the discussion of provider groups and rate reductions, **Mr. Chappuis** said that rates are looked at based on need, access, and cost, and every provider group is treated differently. He would like to take a good look at this between now and July to see what can be done and what other services would affect this provider group. The Department is not opposed to this group

receiving more money, but there are many provider types all across Medicaid that lose money providing services.

Ms. Steinbeck said that this group of providers is not comparable to most provider groups. They compete for the same nursing staff and direct care staff that would be found in Developmental Disabilities (DD) and nursing homes. In the past interim, the executive and legislature ensured that nursing home and DD providers were held harmless in rate decreases. The people that these group homes serve are publicly-funded seriously emotionally disturbed youth.

{Tape: 2; Side: B; Approx. Time Counter: 8.5 - 10.2}

Mr. Chappuis said that these are not apples-to-apples comparisons since they are looking at a slotted system versus an open-ended system. They have tried to work with providers on a system which will provide slots and not give them rate reductions for the next four months. It is a virtual impossibility to get this together without a waiver, freedom of choice, or something else. Much of DD is under waiver, and the Department's choices and priorities are impacted by what is going on here. They feel that the Therapeutic Group Homes are treated in the best way that they can, but when there is an open-ended system and a finite amount of money they must sometimes make difficult choices, and that is what has happened here. They are putting in a rule change for staffing modifications that will reduce the staffing levels to try to help this group with costs.

{Tape: 2; Side: B; Approx. Time Counter: 10.2 - 11.8}

Ms. Gervais interjected that part of the difference she sees in this group of providers in comparison to others is that this group in a Medicaid fee-for-service system as are physicians and hospitals. However, physicians and hospitals have the ability to limit their publicly-funded patients and are not largely dependent on publicly-funded systems for their clients. This group of providers predominantly serves publicly-funded clients and very few private-pay clients. The smaller providers in this class may have 90 to 100 percent of their beds filled with state-paid clients, which limits their ability to shift costs to another payer source.

{Tape: 2; Side: B; Approx. Time Counter: 11.8 - 14.1}

SEN. STONINGTON referred to Exhibit 6 and said that in order to give them a one percent increase, which would hold them harmless, it would cost \$101,261 general fund in FY04 and \$103,079 general fund in FY05. This would be \$204,340 for the biennium.

{Tape: 2; Side: B; Approx. Time Counter: 14.1 - 18.3}

Motion: SEN. STONINGTON moved TO ADD \$204,340 GENERAL FUND IN FY04 TO FUND A PROVIDER RATE INCREASE OF ONE PERCENT IN CHILDREN'S MENTAL HEALTH SERVICES OUT-OF-HOME CARE SERVICES AND CORRESPONDING FEDERAL MATCHING MONEY IN FY04 AND NO ADDITIONAL PERCENTAGE IN FY05.

Discussion:

SEN. STONINGTON said that she does not want this to jeopardize their share of the provider rate increases which the Subcommittee has already approved.

{Tape: 2; Side: B; Approx. Time Counter: 18.3 - 18.8}

Vote: Motion carried 6-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

{Tape: 2; Side: B; Approx. Time Counter: 18.8 - 23.5}

REP. JAYNE expressed concern that should the bills not pass, they would need a backup plan. There was more Subcommittee discussion of this topic.

{Tape: 2; Side: B; Approx. Time Counter: 23.5 - 24}

SEN. COBB distributed information on personal assistance wage increase options to the Subcommittee. Referring to the sheet, he explained that he would like to amend the Subcommittee refinance bill to include a \$.15 hourly wage increase to personal care assistants. There would be a total cost of \$1,019,831 over the biennium and a general fund cost of \$279,697 for the biennium.

EXHIBIT (jhh39a07)

{Tape: 2; Side: B; Approx. Time Counter: 31.8 - 32}

Motion/Vote: SEN. COBB moved TO AMEND THEIR BILL TO INCLUDE A \$.15 CENT PER HOUR WAGE INCREASE FOR PERSONAL CARE ASSISTANT FOR A BIENNIAL TOTAL OF \$279,697 PSA WITH A TOTAL COST OF \$1,019,831, RESTRICTED AND LINE ITEMED. Motion carried 6-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

{Tape: 2; Side: B; Approx. Time Counter: 32 - 34.3}

Ms. Steinbeck reviewed Subcommittee action of the previous day, which approved executive expenditures that were structured to implement the executive proposal for the Adult Mental Health Program, including a full-time equivalent (FTE).

{Tape: 2; Side: B; Approx. Time Counter: 36.3 - 43.3}

Motion: SEN. STONINGTON moved TO ADOPT THE EXECUTIVE PROPOSAL FOR RESTRUCTURING ADULT MENTAL HEALTH SERVICES AS CHARACTERIZED

IN THE DRAFT PROPOSAL AND THAT THE DRAFT BECOME A SUBCOMMITTEE BILL.

Discussion:

There was some discussion of financial eligibility and it was determined that those who are involuntarily committed have no financial eligibility requirement. **SEN. STONINGTON** volunteered to sponsor the bill for the Subcommittee.

Vote: Motion carried 6-0 on a voice vote. **REP. CLARK** voted **SEN. KEENAN's** proxy.

{Tape: 2; Side: B; Approx. Time Counter: 43.3 - 46.7}

{Tape: 3; Side: A; Approx. Time Counter: 0.4 - 1.9}

Motion/Vote: **SEN. COBB** moved TO PUT \$16 MILLION GENERAL FUND BACK INTO THE BASE BUDGET. Motion carried 6-0 on a voice vote. **REP. CLARK** voted **SEN. KEENAN's** proxy.

{Tape: 2; Side: B; Approx. Time Counter: 1.9 - 11.9}

Ms. Steinbeck said that on the first day of the session the joint committee adopted a \$40 million general fund reduction, which is in the HB 2 action. It is \$44 million compared to the Executive Budget and \$49 million compared to the present law state budget. There is a \$49 million biennial reduction in HB 2 as it now stands. In the first week of action, the Subcommittee decided that it would not offset the reduction by any of the negative general fund decision packages that it accepted. Unless the Subcommittee specifies that the general fund reductions they have taken are applied to this amount, HB 2 comes out with \$81 million reduction.

Ms. Gervais distributed and explained a list of the decision packages with a negative general fund impact on which the Subcommittee had voted. The adopted general fund reductions total \$26.7 million in FY04 and \$30.8 million in FY05. The unspecified reduction included in HB 2, based upon the action taken the first day, is \$24.6 million in FY04 and \$24.8 million in FY05. If they offset negative actions against the unspecified reductions, they will have sufficient negative reductions to offset all unspecified general fund reductions.

EXHIBIT (jhh39a08)

{Tape: 3; Side: A; Approx. Time Counter: 11.9 - 13.1}

Motion/Vote: **SEN. STONINGTON** moved TO APPROVE THE REDUCTIONS AS OFFSETS OF UNSPECIFIED GENERAL FUND REDUCTIONS IN THE EXECUTIVE

BUDGET. Motion carried 6-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

{Tape: 3; Side: A; Approx. Time Counter: 13.1 - 16.7}

Motion/Vote: SEN. COBB moved TO EARMARK \$2 MILLION GENERAL FUND EACH YEAR TO THE AMDD BASE. Motion carried 6-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

{Tape: 3; Side: A; Approx. Time Counter: 16.7 - 17.6}

Motion/Vote: SEN. COBB moved TO RECONSIDER ACTION GIVING AMDD \$4 MILLION FROM THE PSA. Motion carried 6-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy.

{Tape: 3; Side: A; Approx. Time Counter: 17.6 - 25.9}

REP. JAYNE requested a list of all of the motions and votes taken in writing and how the budget numbers are changing. Ms.

Steinbeck replied that the votes on motions are checked closely and corroborated with the executive. She and Ms. Gervais have been keeping running totals and distributing them to members, but they cannot list every motion with every vote. They will, however, work on a spreadsheet with each individual change to the funding of HB 2 by the Subcommittee. REP. HAINES said that he would like this list as well.

{Tape: 3; Side: A; Approx. Time Counter: 25.9 - 32}

Ms. Steinbeck referred to item 7 on Exhibit 4 and asked if they wanted to require legislative approval of the decision to accept or reject the potential Medicaid Block Grant Proposal and did they want to implement changes with respect to eligibility for DD services. SEN. COBB asked if they would need a bill to accept the Medicaid Block Grant proposal, and Ms. Steinbeck said that they would. Mr. Chappuis asked them to carefully consider this. If the Department were prohibited by the State from accepting the proposal, they may, de facto, be rejecting it. If it does not make a choice, it may be forced into one by the federal government regulation. The Department does not want to make this decision since it is more appropriate for the legislature to do so. SEN. COBB said that they could wait until Monday to do this.

Discussion on Developmental Disability Eligibility

{Tape: 3; Side: A; Approx. Time Counter: 32 - 38.3}

There was discussion over the issue of eligibility for DD services. SEN. COBB said that he did not want to do financial severity, and there was discussion over the severity of disability as the eligibility requirement. Jeff Sturm, Developmental Disabilities Bureau, said that the state definition already defines severity level - the issue is whether it is

intensive or nonintensive. **Ms. Gervais** said that statute does define those with developmental disability, but it does not define intensive or nonintensive, and it does not specify that the Department will serve only intensive level people or intensive and nonintensive level people. The decision as she sees it is whether they would like to put a definition of intensive and nonintensive in statute and whether or not they wish to specify that the service delivery system only serves those who meet the intensive level definition or some other level of definition.

{Tape: 3; Side: A; Approx. Time Counter: 38.3 - 41}

Wally Melcher said that the definition of disability is already defined in administrative rule. The terminology of intensive versus nonintensive is a funding definition rather than a clinical definition. The Medicaid waiver requires that they have some level of care defined, but at this point, it represents a moving target. The proposed changes in Medicaid waivers and the feedback that they received from Central Medicaid and Medicare Services (CMS), have caused uncertainty in waiver eligibility. If it is a funding issue, they no longer know where they stand. If they make the decision to serve only intensive individuals, they will be cutting 600 to 1,000 people out of services in the State.

{Tape: 3; Side: A; Approx. Time Counter: 41 - 45}

Chris Volinkety pointed out that the screening process is not set up on financial eligibility criteria, but that it is considered. Providers review the family situation, the severity of disability, and the supports needed. Based on this information, the most needy individual is awarded the slot, and the others are not served.

Ms. Gervais said that as LFD staff the risk that she sees for the legislature is that there is no statutory guideline to determine which populations will be served. If a lawsuit is brought against the State and is successful, it could require them to serve everyone. **Ms. Steinbeck** added that if a statute is so broad that eligibility criteria are completely up to the Department, then it could well be an unconstitutional delegation of legislative authority. She commented that it may be worth getting legal advice on this.

{Tape: 3; Side: B; Approx. Time Counter: 1 - 8.9}

SEN. STONINGTON asked the Department to give them some input with regard to language that perhaps should be included in statute and which would alleviate the legislative concerns regarding authority.

I-146 Options

In her review of options with regard to I-146 tobacco control money, **Ms. Steinbeck** first stated that delaying implementation will not do what they want. In consultation with legal staff, she was told that they could divert a specific amount to the PSA or divert all of it to the PSA. They need to decide whether they will do this permanently or for two years. It was agreed that \$5.8 million of tobacco prevention money would go to the PSA and the \$3.2 million would stay within the SSR for use by the tobacco prevention people.

Responding to questions from **REP. JAYNE** as to what part of the tobacco prevention money they are moving around, **Ms. Steinbeck** said that 40 percent goes to the constitutional trust, 32 percent is for prevention, and 17 percent for CHIP. The Subcommittee is dealing with the 32 percent which goes to prevention. In taking the money, they will be amending statute. This \$5.8 million will not go to tobacco prevention, but would go towards the Montana Initiative for the Abatement of Mortality in Infants (MIAMI) program, Meals-on-Wheels, Domestic Violence, and other programs in the PSA account. I-146 establishes statute so they do have authority to do this.

SEN. COBB said that they will need a bill to implement the diversion of so much money from the I-146 account to the DPHHS PSA for two years. **REP. JAYNE** said that she is unsure whether the legislature has the authority to divert this money. **SEN. COBB** said that it is established in statute, and the Subcommittee will amend the law establishing the tobacco prevention account just as they would amend any other law.

{Tape: 3; Side: B; Approx. Time Counter: 8.9 - 11.3}

Ms. Steinbeck stated that the Subcommittee has adopted the Executive Budget in which \$2.6 million of the CHIP allocation in the tobacco settlement account was moved to Medicaid matching funds and asked if they wanted to put a specific amount as an allowable use for Medicaid matching or a permanent diversion from the CHIP. **SEN. COBB** replied that they should make it for two years. **Ms. Steinbeck** reviewed the final part of this which would be to make these one-time-only or whether to backfill with general fund. The bill draft will reflect temporary diversions of specific amounts of money.

{Tape: 3; Side: B; Approx. Time Counter: 11.8 - 12}

Motion/Vote: **SEN. COBB** moved A BILL DRAFT REQUEST TO DIVERT \$5.8 MILLION OUT OF THE TOBACCO SETTLEMENT ACCOUNT FOR TWO YEARS TO GO TO THE DPHHS PSA AND \$2.6 MILLION OUT OF CHIP FOR MEDICAID MATCH

FOR TWO YEARS. Motion carried 5-1 with REP. JAYNE voting no on a voice vote. SEN. COBB voted SEN. STONINGTON's proxy, and REP. CLARK voted SEN. KEENAN's proxy.

Childcare Funding

{Tape: 3; Side: B; Approx. Time Counter: 12 - 17.4}

Ms. Gervais distributed language for HB 2 which would restrict usage of the funding for childcare appropriated out of the PSA (Exhibit 9) to provide the funding to be used for childcare subsidies. If Montana should receive additional federal funding greater than the FY02 level, then a portion of the funding in this childcare item could be used to provide benefits and services under the Temporary Assistance for Needy Families (TANF) program. The second paragraph of Exhibit 9 would be included in the Fiscal Report and HB 2 Narrative to outline the intent and expectations of the legislature.

EXHIBIT (jhh39a09)

SEN. COBB said that he wants DPHHS to keep spending at the \$27 million level from the 2002 base budget for childcare, but any money that is freed up through more federal funding will go to TANF to pay for some of the caseload.

{Tape: 3; Side: B; Approx. Time Counter: 17.8 - 18}

Motion/Vote: SEN. COBB moved THE LANGUAGE IN EXHIBIT 9 FOR HB 2 AND THE FISCAL REPORT AND NARRATIVE FOR HB 2. Motion carried 5-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy, and SEN. STONINGTON's proxy was not voted.

{Tape: 3; Side: B; Approx. Time Counter: 18 - 23.3}

SEN. COBB said that he would like some language inserted somewhere that says that they recommend that \$80,000 per year be spent on each of the eight recognized tribes for approved tobacco prevention programs from the \$3.2 million tobacco prevention money. **Ms. Steinbeck** said that it might be an appropriate condition that so much of the tobacco settlement money must be used for approved tobacco cessation and control programs. She said that she would develop language for consideration on Monday.

Bill Draft for the Nursing Home Center Bed Tax

{Tape: 3; Side: B; Approx. Time Counter: 23.3 - 31}

Ms. Steinbeck distributed the initial draft of the nursing care bed tax for consideration. She said that it does not have an appropriation similar to the appropriation that was put in for the Intensive Care Facility for the Mentally Retarded (ICF/MR),

so they may wish to address this. **Ms. Steinbeck** asked if the bill could have a retroactive date if they were to put the appropriation in and collect money this year. **Chuck Hunter, Refinancing Unit**, said that he did not include a retroactive date or an appropriation in the bill draft. Currently, Medicaid reimbursement collections for this facility stay with the facility. This will change as of July 1, 2003, and it was legal staff's recommendation that it would be simpler to not include a retroactive date.

EXHIBIT(jhh39a10)

Ms. Gervais said that with the ICF/MR bill, Medicaid reimbursements go directly to pay bonds and then go to general fund. In the case of the Nursing Care Center, the funds return to support the Nursing Care Center, rather than into the general fund.

Responding to questions from **Ms. Steinbeck** regarding a Department bill draft to change this, **Mr. Hunter** said that the bill has passed and is enrolling. He explained that it changes the collection method as of July 1, at which time it will be set up the same way the ICF/MR is. The payment will be made and the Medicaid reimbursement will go directly to general fund, rather than to the facility as of July 1, 2003. If they were to do this retroactively, they would need to go through several other money transfer steps to make this happen in order to keep the general fund whole. The bill, as written, takes into account the new system beginning on July 1. He continued that the reason there are differences between the ICF/MR draft and this one, is that in the ICF/MR draft they are trying to get money this year and they need an appropriation this year in order to collect money for two quarters.

{Tape: 3; Side: B; Approx. Time Counter: 30.8 - 31}

Motion/Vote: SEN. COBB moved TO ADOPT DRAFT BILL LC2154. Motion carried 5-0 on a voice vote. REP. CLARK voted SEN. KEENAN's proxy, and SEN. STONINGTON's proxy was not voted.

Discussion of Language for PSA Funding

{Tape: 3; Side: B; Approx. Time Counter: 31 - 36}

Referring to Exhibit 4, numbers 7 and 8 a, b, and c, **Ms. Steinbeck** reviewed the pros and cons of making line item appropriations from the PSA. While it would be easier to read HB 2 and determine what is funded, line items from the PSA make those items more easily subject to line-item veto by the Governor.

Referring to the DPHHS budget solution sheet, **SEN. COBB** referenced the cigarette tax bills and the coal tax, HB 74, from which DPHHS is allocated \$28 million by amendment. He said that they need to make language that is contingent on passage of all or some of the package.

EXHIBIT(jhh39a11)

Ms. Steinbeck suggested that they could make the language contingent on passage or approval of a bill that raises cigarette taxes by \$.41 a pack and chewing tobacco taxes by a set amount and allocate them to the PSA. It would not matter which bill passed as long as there were provisions in it allocating to a certain account. **SEN. COBB** asked that LFD staff get some contingency language including the coal tax money and other funding for consideration on Monday.

Ms. Gervais distributed a list of positions at Eastmont Human Services Center and an e-mail from Gail Briesse-Zimmer, the Fiscal Bureau Chief for Disability Services Division (DSD), regarding the increase in costs in the event that Eastmont was kept open until July 1, 2004. According to this information, it would be another \$2.2 million in general fund.

EXHIBIT(jhh39a12)

EXHIBIT(jhh39a13)

Ms. Steinbeck distributed an article from the Portland Press Herald on the issue of the children's mental health system in Maine.

EXHIBIT(jhh39a14)

ADJOURNMENT

Adjournment: 11:25 A.M.

REP. EDITH CLARK, Chairman

SYDNEY TABER, Secretary

EC/ST

EXHIBIT (jhh39aad)